

MONTANA LEGISLATIVE HISTORY

Chapter 493 19 73

Bill H _____ S 127 Original bill & history no C

H. Committee on Labor + Employment Relations

Hearing Date(s) Feb 23 ☒ C

Feb 28 ☒ C

_____ ☐ C

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Date Out Feb 28 ☐ C

S. Committee on Labor + Employment Relations

Hearing Date(s) Jan 19 ☒ C

Jan 24 ☒ C

Feb 05 ☒ C

_____ ☐ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILLS

HOUSE BILLS

No.	Date Rec.	Title	Author	Date Act.	Type Act.	No.	Date Rec.	Title	Author	Date Act.	Type Act.
48	1/2	Safety & Health	Siderius		Held 1974	104	1/29	Base period & benefit year. Amendments	Baucus, Lombardi	Do Pass	
99	1/11	Hoisting Engrs.	Lowe & Boylan			111	1/29	Period of Cov. & Election for coverage	Lombardi, McKittrick	Do Pass	
113	1/13	"Employer"	Lowe & Siderius	2/5	Pass	112	2/3	Ment. & Nerv. system Injury without trauma	Norman Bennetts	Not Pass	
114	1/13	Hospitals	Siderius	2/5	Pass	62	2/6	Vac. Benefits	Brand Kessner	Pass	
115	1/13	Ext. of Coverage	Siderius	2/5	Pass	223	2/9	Waiver of requirements in filing of claim	McKittrick		
116	1/13	Repealing Secs.	Lowe & Siderius	2/5	Pass	145	2/10	Board of Appeals	Baucus Lombardi		
117	1/13	Def. of Insurer	Lowe & Siderius	2/5	Pass	214	2/13	Incrs. in maximum Weekly benefits	McKittrick Lee		
118	1/13	Temp. total Disab.	Lowe & Siderius	2/5	Pass	431	2/12	Incrs. in time to Recover penalties	Greely McKittrick	As Amen	
119	1/13	Perm. Part. Disab.	Lowe & Siderius	2/5	Pass	344	2/15	Pens. adjustment	Towe Fasbender	Ref. to St. Adm.	
120	1/13	Perm. total Disab.	Keenan & Siderius	2/5	Pass	357	2/15	Exempt from Disqualification	Lee McKittrick		
121	1/13	Def. of Wages	Keenan & Siderius	2/5	Pass	372	2/15	Women reach fullest potential	Bennetts Bardoune		
122	1/13	Inj. prod. partial Disability	McKeon Siderius	2/5	Pass	444	2/15	Montana residents pref'd. pub. labor	Swanberg McKittrick		
123	1/13	Inj. prod. perm. Dis	McKeon & Siderius	2/5	Pass	488	2/17	Job. protect. for Railroad employees	Brand Kimble		
124	1/13	Exempted Employm.	Siderius	2/5	Pass	358	2/17	Charge disqualifying Retirement income	Lynch McKittrick		
125	1/13	'Indep. Contractor'	Siderius	2/5	Pass	279	2/17	Minim. wage be excl. of gratuities	Hall		
126	1/13	Med. & Hosp. Services Apprvd.	McKeon	2/5	Pass	131	2/17	Incrs. in silicosis benefits payments	Lynch Lee		
127	1/13	Elect. of Employers & Employees	McKeon	2/	Pass	176	2/21	Allow 180 days for public office	Brand		
128	1/13	"Av. Weekly Wage"	Bertsche & Siderius	2/5	Pass	445	2/22	Unlawful to disch. without just cause.	Kimble		
129	1/13	Inj. prod. temp. Disability	McKeon & Siderius	2/5	Pass						
130	1/13	Inj. causing Death	McKeon & Siderius	2/5	Pass						
131	1/13	Nonexem. employm.	Keenan & Siderius	2/5	Pass						

SENATE COMMITTEE Labor & Employment Relations

MINUTES OF MEETING OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
STATE SENATE

A meeting of the Labor and Employment Relations Committee was called to order by Chairman Siderius, January 19, 1973 at 12:00 Noon, Room 402 of the State Capitol Building.

ROLL CALL: Bertsche, Keenan and Bennett excused. Lowe and McNamer absent.

CONSIDERATION OF SENATE BILL NO. 48:

Chairman Siderius requested permission of the Committee to send this bill to the Judiciary Committee for review. Senator Jensen motioned to send it to Judiciary, Flynn seconded the motion.
MOTION CARRIED.

CONSIDERATION OF SENATE BILL NO. 99:

Senator Lowe has been working with some people on this bill but was not present at the meeting, therefore, further action on this bill was delayed.

CONSIDERATION OF SENATE BILLS NOS. 113 through 138:

This package of bills is scheduled for a public hearing on Monday, January 22, 1973 at 12:00 Noon. If testimony is not concluded on that day, it will be carried over to Wednesday.

Chairman Siderius adjourned the meeting at 12:15 p.m.

SENATOR GEORGE SIDERIUS, CHAIRMAN

MINUTES OF MEETING OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
STATE SENATE

A meeting of the Labor and Employment Relations Committee was called to order by Chairman Siderius, January 24, 1973, at 12:00 Noon, Room 402 of the State Capitol Building.

ROLL CALL: Senator Flynn was absent, all other members present.

CONTINUATION OF SENATE BILLS 113 THROUGH 138:

SB 127: Bruce Toole and Neil Keefer worked on this bill. The Governor's Council felt that 100% subrogation is only right. State now allows 50% of compensation and none on medical. Mr. Keefer stated that this bill simply provides for subrogation in the event that a tort action exists. It also provides certain protection for the workman. Now the insurer participates in the cost of litigation. However, the insurer can elect to participate or not. The statute of limitation for instituting action is presently 6 months and this bill would change it to one (1) year. This provides some benefits to industry to recover some compensation.

SB 128: The wording of this bill is almost verbatim to what the Governor's Council suggested. This procedure is used to figure average weekly wage for any given jurisdiction. The average weekly wage, currently, is just under \$130.

SB 129 and 130: Held back for further discussion.

SB 131: Refers to the fine and misdemeanor charge. Not less than \$100 nor more than \$600, or imprisonment not to exceed 6 months in the county jail, or both. The Governor's Council has tried to bring all hazardous fields under Workmen's Compensation. Senator Lowe remarked that under these bills, coverage would be mandatory and the only elective an employer has is which Plan to be covered under. Mr. Keefer mentioned that the ideal situation would be to have an uninsured fund. We do not have this at the present and have not talked much about the mechanics of it.

Senator McNamer and Senator Shea felt that perhaps during the interim the Workmen's Compensation Division might think about this and give it some study. Senator Shea also brought out the point that all employers should be notified of the new law that makes it mandatory for them to be covered by Workmen's Compensation in view of the penalties for not being covered. This could be taken care of by the news media.

SB 132: Was recommended that the age limit for a child to be a full-time student be changed to 26. However, this bill changes it from 21 to 22 years, thus covering a 4 year college course. Social Security benefits also go by 22 years.

SB 133: Must be under the Merit System or we lose federal funds. Senator Keenan has an amendment to which Mr. Carden has no objections.

MINUTES OF MEETING OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
STATE SENATE

A meeting of the Labor and Employment Relations Committee was called to order by Chairman Siderius, February 5, 1973, at 12:00 Noon, Room 402 of the State Capitol Building.

ROLL CALL: All members present.

SENATE BILL 124: A new sub-section following sub-section (6), page 2, line 3 to read as follows: "(7) Agricultural employment when there are three (3) or less employees, or the gross annual payroll does not exceed eighteen thousand dollars (\$18,000)."

Senator Bertsche moved, seconded by Senator Keenan, that the amendment be accepted. Motion carried.

Senator Bertsche moved, seconded by Senator Keenan that SB 124 DO PASS AS AMENDED. Motion carried.

SENATE BILL 125: Senator Bertsche moved, Seconded by Senator Lowe that the amendment in Section 2, lines 21 through 24 by striking the sub-section and renumbering the sub-section (3) as (2) and on page 1, line 25, strike the words "the individual" and "customarily", be accepted. Motion carried.

Senator Flynn moved, seconded by Senator Bertsche that SB 125 DO PASS AS AMENDED. Motion carried.

SENATE BILL 126: Senator Bertsche moved, seconded by Senator Lowe that the amendment in the title of the bill being line 7 and 8, by striking the words "APPROVED BY THE DIVISION OF WORKMEN'S COMPENSATION", be accepted. Motion carried.

Senator Bertsche moved, seconded by Senator Flynn that line 25 be amended by adding before the "period" the following "for the injuries sustained", and page 2, line 5 by striking the words "for approval" and page 2, line 7 by adding after the word "period" the following: "unless the division and the hospital agree to interim amendments of the schedule". Motion carried.

Senator Shea moved, seconded by Senator Lowe that Senate Bill 126 DO PASS AS AMENDED. Motion carried.

SENATE BILL 127: To be discussed further. Amendments to be prepared.

SENATE BILL 128: Senator Lowe submitted an amendment for Section 1, Page 1, line 22, after the word "year" delete the "comma" and add a "period" and strike the rest of line 22, all of line 23 and 24. Motion for the amendment carried.

Senator Lowe moved, seconded by Senator Keenan that SB 128 DO PASS AS AMENDED. Motion carried.

February 23, 1973

LABOR AND EMPLOYMENT RELATIONS COMMITTEE PROCEEDINGS:

A meeting of the Labor and Employment Relations Committee was held on Friday, February 23, 1973 at 10:30 a.m. in Room 428A with Chairman Pat McKittrick presiding. All members were present except Reps. Colberg and Lee, who were excused.

SENATE BILL # 123 -- SPONSOR: Sen. McKeon said that the bill provides for total permanent disability to receive compensation under the Workmen's Comp. Act. Sen. Siderius endorsed the statements made by Sen. McKeon. Jim Murry, AFL-CIO, supports all of these bills (113-138) minus the Senate amendments. Jim Carden said that it pays 66 2/3% of an injured worker's earnings, not to exceed the state average, under this bill. It provides that any Social Security the injured worker receives will be credited against the Workmen's Comp. benefits. Questions followed. Mr. Neil Keefer, Governor's Advisory Committee, -- drafted the bulk of this package of bills. He helped answer some of the Committee's questions on this and the following bills.

SENATE BILL # 124 -- SPONSOR: Sen. Siderius said that when it was acted on by the Senate Committee, it was amended to have farmers covered. On the floor, in order for the bill to be passed the amendments had to be withdrawn. He urged re-adoption of the amendments. Questions followed.

SENATE BILL # 125 -- SPONSOR: Sen. Siderius introduced Jim Carden, Workmen's Comp., who explained this and some of the following bills. The bill amends the present definition of "independent contractor" to be more liberal. Questions followed. Robert Holding, St. Regis Paper Company, helped answer some of the questions.

SENATE BILL # 126 -- SPONSOR: Sen. McKeon. Jim Carden said that it extends the benefits beyond the three year period for totally permanently disabled workers, in line with the recommendations of the President's Commission. The amendments are allowing, on the showing of a good cause, extensions beyond the three years. The bill doesn't have a large cost factor, because a majority of the cases are resolved in a year and a half. Rep. Driscoll said that the bill should be amended to become retroactive. Questions followed. Jim Murry spoke for the Montana Hospital Assoc. in saying that they preferred it to be handled on a fiscal year basis rather than a calendar year.

SENATE BILL # 127 -- SPONSOR: Sen. McKeon. Jim Carden said that it has to do with a recovery from a third party action that may arise out of negligence. Under the current law, an employee may sue that third party. The insurance carrier may recover up to 50% of the compensation paid to him. To offset the cost of this package of bills, the rate of recovery by the insurance carrier has been changed to up to 100%. Neil Keefer spoke on it -- he wanted the Committee to either kill the bill or strike the Senate amendments. The amendment on page 3, line 19 of the bill was drawn up as a compromise. Questions followed.

SB # 131: Rep. Turner moved, Colberg seconded that it BE CONCURRED IN. Motion carried unanimously.

SB # 132: Rep. Colberg moved that it BE CONCURRED IN. Motion carried unanimously.

SB # 133: Rep. Hodges moved that it BE CONCURRED IN AS AMENDED by the Governor. Discussion followed, Rep. Lee seconded the motion. Motion carried unanimously.

SB # 134: Rep. Lee moved that it BE CONCURRED IN. Colberg seconded it; motion carried unanimously.

SB # 135: Rep. Ellerd moved, Lee seconded, that it BE CONCURRED IN. Motion carried unanimously.

SB # 136: Rep. Tierney moved, seconded by Lee, that it BE CONCURRED IN. Motion carried unanimously.

SB # 137: Discussion took place. Rep. Turner moved and Colberg seconded that it BE CONCURRED IN. Motion carried unanimously.

SB # 138: Rep. Baeth moved, Tierney seconded, that it BE CONCURRED IN. Motion carried unanimously. (Chairman McKittrick then returned ,)

SB # 123: Rep. Colberg moved, Hodges seconded, that it BE CONCURRED IN. Discussion followed. Motion carried; East opposed.

SB # 124: Rep. Lombardi moved, Tierney seconded, that subsection (7) be reinstated in its entirety. Discussion; motion was then carried with Hodges, Turman and Tierney opposed. Lombardi moved, Colberg seconded, that it BE CONCURRED IN AS AMENDED. Motion carried unanimously.

SB # 125: Rep. Baeth moved, Lee seconded, that it BE CONCURRED IN. Motion carried unanimously.

SB # 126: Rep. Lee moved, Baeth seconded, that it BE CONCURRED IN. Motion carried unanimously.

SB # 127: Rep. Baeth moved, seconded by Turman, that the stricken language on p. 3 lines 19-25 be reinstated; discussion followed. Motion carried unanimously. Baeth moved to amend on page 4, lines 21-25 by reinstating the stricken material there-also the first word on p. 5. Seconded by Turman. Motion carried; Bell opposed. Baeth moved, Colberg seconded, that it BE CONCURRED IN AS AMENDED. Motion carried unanimously.

SB # 128: Rep. Hodges moved to reinstate on p. 1, lines 22-24 the material therein. Colberg seconded it; motion carried; East opposed. Hodges moved it BE CONCURRED IN AS AMENDED; Lombardi

1 SENATE BILL NO. 127

2 INTRODUCED BY MCKEON

3
4 92-204

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ELECTION
7 OF EMPLOYERS AND EMPLOYEES TO COME UNDER THE WORKMEN'S
8 COMPENSATION ACT; PROVIDING FOR ACTIONS AGAINST THIRD PARTY
9 CAUSING INJURY; PROVIDING FOR A RIGHT TO SUBROGATION; AND
10 REPEALING SECTION 92-204, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF
13 MONTANA:

14 Section 1. There is a new section to be numbered
15 92-204.1, R.C.M. 1947, which reads as follows:

16 92-204.1. Election of employer and employee to come
17 under act--action against third party causing injury--right
18 to subrogation. Where both the employer and employee have
19 elected to come under this act, the provisions of this act
20 shall be exclusive, and such election shall be held to be a
21 surrender by such employer and the servants, and employees
22 of such employer and such employee, as among themselves, of
23 their right to any other method, form or kind of
24 compensation, or determination thereof, or to any other
25 compensation, or kind of determination thereof, or cause of

THIRD READING

1 action at law, suit in equity, or statutory or common-law
2 right or remedy, or proceeding whatever, for or on account
3 of any personal injury to or death of such employee, except
4 as such rights may be hereinafter specifically granted; and
5 such election shall bind the employee himself, and in case
6 of death shall bind his personal representative, and all
7 persons having any right or claim to compensation for his
8 injury or death, as well as the employer, and the servants
9 and employees of such employer, and those conducting his
10 business during liquidation, bankruptcy or insolvency. The
11 right to compensation and medical benefits as provided by
12 this act shall not be affected by the fact that the injury,
13 occupational disease or death is caused ~~under--circumstances~~
14 ~~creating--in--some~~ BY THE NEGLIGENCE OF A third party other
15 than the employer, or the servants or employees of the
16 employer, ~~---a--legal--liability--to--pay--damages--therefor.~~
17 Whenever such event shall occur to an employee while
18 performing the duties of his employment and such event shall
19 be caused by the act or omission of some persons or
20 corporations other than his employer, or the servants or
21 employees of his employer, then such employee, or in case of
22 his death his heirs or personal representative shall, in
23 addition to the right to receive compensation under this
24 act, have a right to prosecute any cause of action he may /
25 have for damages against such persons or corporations.

Further provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then such employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the workmen's compensation act, have a right to prosecute any cause of action he may have for damages against such servants or employees of his employer, causing such injury. Provided, that the employer or insurer shall be entitled to full subrogation for all COMPENSATION AND benefits paid or to be paid under this act, except as otherwise provided in this section. The employer's or insurer's right of subrogation shall be a first lien on any SUCH CLAIM, JUDGMENT OR recovery. The employee shall institute such third party action after giving the employer or insurer reasonable notice of his intention to institute such third party action. ~~He may request that such employer or insurer pay a proportionate share of the reasonable cost, including attorneys' fees, of such third party action. The employer or insurer may elect not to participate in the cost of the third party action, but if such election is made, the employer or insurer shall be deemed to have waived all subrogation rights granted by this section.~~ Provided,

Handwritten note:
 He may request that such employer or insurer pay a proportionate share of the reasonable cost, including attorneys' fees, of such third party action.

J

1 however, that if an employee refuses or fails to institute
 2 such action within one (1) year from the date of injury, the
 3 employer or insurer may institute SUCH third party action IN
 4 HIS NAME AND FOR HIS BENEFIT OR THAT OF HIS PERSONAL
 5 REPRESENTATIVE. If the employee OR HIS PERSONAL
 6 REPRESENTATIVE institutes such third party action, he shall
 7 be entitled to at least one-third (1/3) of the amount
 8 recovered by judgment or compromise settlement less his
 9 proportionate share of the reasonable costs, including
 10 attorneys' fees, in the event the amount of recovery is
 11 insufficient to provide him with that amount after payment
 12 of subrogation. In the event the employer or insurer
 13 institutes such third party action, he shall pay to the
 14 employee any amount recovered by judgment or settlement
 15 which is in excess of the amounts paid or to be paid under
 16 this act ~~including~~ AN EMPLOYER'S OR INSURER'S reasonable
 17 costs and attorneys' fees. Nothing contained in this
 18 section shall prevent the employer or insurer, including the
 19 division of workmen's compensation, from entering into
 20 compromise agreements in settlement of subrogation rights.

21 ~~If--death--results--from--the--injury--or--occupational--disease,~~
 22 ~~the--employer--shall--have--a--right--of--action--against--the--third~~
 23 ~~party--for--recovery--of--any--amount--paid--under--this--act,--and~~
 24 ~~such--right--of--action--shall--be--in--addition--to--any--cause--of~~
 25 ~~action--by--the--heirs--or--personal--representative--of--the~~

Reinstated

1 ~~deceased~~ IN THE EVENT THAT THE AMOUNT OF COMPENSATION AND
2 BENEFITS PAYABLE UNDER THIS ACT SHALL NOT HAVE BEEN FULLY
3 DETERMINED AT THE TIME SUCH EMPLOYEE OR HIS HEIRS OR
4 PERSONAL REPRESENTATIVE, OR THE EMPLOYER OR INSURER, SHALL
5 RECEIVE SETTLEMENT OF HIS ACTION, PROSECUTED AS AFORESAID,
6 THEN THE DIVISION SHALL DETERMINE WHAT PROPORTION OF SUCH
7 SETTLEMENT SHALL BE ALLOCATED UNDER SUBROGATION AND SUCH
8 DETERMINATION MAY BE APPEALED AS ANY OTHER DETERMINATION OF
9 THE DIVISION.

10 Section 2. Section 92-204, R.C.M. 1947, is repealed.

-End-

February 23, 1973

LABOR AND EMPLOYMENT RELATIONS COMMITTEE PROCEEDINGS:

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February 28, 1973

SB # 131: Rep. Turner moved, Colberg seconded that it BE CONCURRENT IN. Motion carried unanimously.

SB # 132: Rep. Colberg moved that it BE CONCURRENT IN. Motion carried unanimously.

SB # 133: Rep. Hodges moved that it BE CONCURRENT IN AS AMENDED by the Governor. Discussion followed, Rep. Lee seconded the motion. Motion carried unanimously.

SB # 134: Rep. Lee moved that it BE CONCURRENT IN. Colberg seconded it; motion carried unanimously.

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SENATE BILL NO. 127

INTRODUCED BY MCNEIL.

92-204

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ELECTION OF EMPLOYERS AND EMPLOYEES TO COME UNDER THE WORKMEN'S COMPENSATION ACT; PROVIDING FOR ACTIONS AGAINST THIRD PARTY CAUSING INJURY; PROVIDING FOR A RIGHT TO SUBROGATION; AND REPEALING SECTION 92-204, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. There is a new section to be numbered 92-204.1, R.C.M. 1947, which reads as follows:

92-204.1. Election of employer and employee to come under act--action against third party causing injury--right to subrogation. Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and the servants, and employees of such employer and such employee, as among themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of

THIRD READING

1 action at law, suit in equity, or statutory or common-law
2 right or remedy, or proceeding whatever, for or on account
3 of any personal injury to or death of such employee, except
4 as such rights may be hereinafter specifically granted; and
5 such election shall bind the employee himself, and in case
6 of death shall bind his personal representative, and all
7 persons having any right or claim to compensation for his
8 injury or death, as well as the employer, and the servants
9 and employees of such employer, and those conducting his
10 business during liquidation, bankruptcy or insolvency. The
11 right to compensation and medical benefits as provided by
12 this act shall not be affected by the fact that the injury,
13 occupational disease or death is caused ~~under--circumstances~~
14 ~~creating--in--some~~ BY THE NEGLIGENCE OF A third party other
15 than the employer, or the servants or employees of the
16 employer, ~~---a--legal--liability--to--pay--damages--therefor.~~
17 Whenever such event shall occur to an employee while
18 performing the duties of his employment and such event shall
19 be caused by the act or omission of some persons or
20 corporations other than his employer, or the servants or
21 employees of his employer, then such employee, or in case of
22 his death his heirs or personal representative shall, in
23 addition to the right to receive compensation under this
24 act, have a right to prosecute any cause of action he may
25 have for damages against such persons or corporations.

1 Further provided, that whenever such employee shall receive
 2 an injury while performing the duties of his employment and
 3 such injury or injuries, so received by such employee, are
 4 caused by the intentional and malicious act or omission of a
 5 servant or employee of his employer, then such employee, or
 6 in case of his death, his heirs or personal representatives,
 7 shall, in addition to the right to receive compensation
 8 under the workmen's compensation act, have a right to
 9 prosecute any cause of action he may have for damages
 10 against such servants or employees of his employer, causing
 11 such injury. Provided, that the employer or insurer shall
 12 be entitled to full subrogation for all COMPENSATION AND
 13 benefits paid or to be paid under this act, except as
 14 otherwise provided in this section. The employer's or
 15 insurer's right of subrogation shall be a first lien on any
 16 SUCH CLAIM, JUDGMENT OR recovery. The employee shall
 17 institute such third party action after giving the employer
 18 or insurer reasonable notice of his intention to institute
 19 such third party action. ~~He may request that such employer~~
 20 ~~or insurer pay a proportionate share of the reasonable cost,~~
 21 ~~including attorneys' fees, of such third party action. The~~
 22 ~~employer or insurer may elect not to participate in the cost~~
 23 ~~of the third party action, but if such election is made, the~~
 24 ~~employer or insurer shall be deemed to have waived all~~
 25 ~~subrogation rights granted by this section.~~ Provided,

1 however, that if an employee refuses or fails to institute
2 such action within one (1) year from the date of injury, the
3 employer or insurer may institute SUCH third party action IN
4 HIS NAME AND FOR HIS BENEFIT OR THAT OF HIS PERSONAL
5 REPRESENTATIVE. If the employee OR HIS PERSONAL
6 REPRESENTATIVE institutes such third party action, he shall
7 be entitled to at least one-third (1/3) of the amount
8 recovered by judgment or compromise settlement less his
9 proportionate share of the reasonable costs, including
10 attorneys' fees, in the event the amount of recovery is
11 insufficient to provide him with that amount after payment
12 of subrogation. In the event the employer or insurer
13 institutes such third party action, he shall pay to the
14 employee any amount recovered by judgment or settlement
15 which is in excess of the amounts paid or to be paid under
16 this act including AN EMPLOYER'S OR INSURER'S reasonable
17 costs and attorneys' fees. Nothing contained in this
18 section shall prevent the employer or insurer, including the
19 division of workmen's compensation, from entering into
20 compromise agreements in settlement of subrogation rights.
21 ~~If--death--results--from--the--injury--or--occupational--disease,~~
22 ~~the--employer--shall--have--a--right--of--action--against--the--third~~
23 ~~party--for--recovery--of--any--amount--paid--under--this--act,--and~~
24 ~~such--right--of--action--shall--be--in--addition--to--any--cause--of~~
25 ~~action--by--the--heirs--or--personal--representative--of--the~~

Reinstated

1 deceased IN THE EVENT THAT THE AMOUNT OF COMPENSATION AND
2 BENEFITS PAYABLE UNDER THIS ACT SHALL NOT HAVE BEEN FULLY
3 DETERMINED AT THE TIME SUCH EMPLOYEE OR HIS HEIRS OR
4 PERSONAL REPRESENTATIVE, OR THE EMPLOYER OR INSURER, SHALL
5 RECEIVE SETTLEMENT OF HIS ACTION, PROSECUTED AS AFORESAID,
6 THEN THE DIVISION SHALL DETERMINE WHAT PROPORTION OF SUCH
7 SETTLEMENT SHALL BE ALLOCATED UNDER SUBROGATION AND SUCH
8 DETERMINATION MAY BE APPEALED AS ANY OTHER DETERMINATION OF
9 THE DIVISION.

10 Section 2. Section 92-204, R.C.M. 1947, is repealed.

-End-

(5) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

(6) Any person performing services in return for aid or sustenance only.

Section 2. Section 92-202, R.C.M. 1947, is repealed.

Approved: March 29, 1973.

CHAPTER NO. 493

An Act Providing for Election of Employers and Employees to Come Under the Workmen's Compensation Act; Providing for Actions Against Third Party Causing Injury; Providing for a Right to Subrogation; and Repealing Section 92-204, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is a new section to be numbered 92-204.1, R.C.M. 1947, which reads as follows:

92-204.1. **Election of employer and employee to come under act—action against third party causing injury—right to subrogation.** Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and the servants, and employees of such employer and such employee, as among themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case of death shall bind his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act shall not be affected by the fact that the injury, occupational disease or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event shall occur to an employee while performing the duties of his employment and such

event shall be caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then such employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. Further provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then such employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against such servants or employees of his employer, causing such injury. Provided, that the employer or insurer shall be entitled to full subrogation for all compensation and benefits paid or to be paid under this act, except as otherwise provided in this section. The employer's or insurer's right of subrogation shall be a first lien on such claim, judgment or recovery. The employee shall institute such third party action after giving the employer or insurer reasonable notice of his intention to institute such third party action. The employee may request that such insurer pay a proportionate share of the reasonable cost, including attorneys' fees, of such third party action. The insurer may elect not to participate in the cost of the third party action, but as such election is made the insurer shall be deemed to have waived fifty per cent (50%) of its subrogation rights granted by the section. Provided, however, that if an employee refuses or fails to institute such action within one (1) year from the date of injury, the employer or insurer may institute such third party action in his name and for his benefit or that of his personal representative. If the employee or his personal representative institutes such third party action, he shall be entitled to at least one-third ($\frac{1}{3}$) of the amount recovered by judgment or compromise settlement less his proportionate share of the reasonable costs, including attorneys' fees, in the event the amount of recovery is insufficient to provide him with that amount after payment of subrogation. In the event the employer or insurer institutes such third party action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under this act an employer's or insurer's reasonable costs and attorneys' fees. Nothing contained in this section shall prevent the employer or insurer, including the division of workmen's compensation, from entering into compromise agreements in settlement of subrogation rights. If death

results from the injury or occupational disease, the employer shall have a right of action against the third party for recovery of any amount paid under this act, and such right of action shall be in addition to any cause of action by the heirs or personal representative of the deceased. In the event that the amount of compensation and benefits payable under this act shall not have been fully determined at the time such employee or his heirs or personal representative, or the employer or insurer, shall receive settlement of his action, prosecuted as aforesaid, then the division shall determine what proportion of such settlement shall be allocated under subrogation and such determination may be appealed as any other determination of the division.

Section 2. Section 92-204, R.C.M. 1947, is repealed.

Approved: March 29, 1973.

CHAPTER NO. 494

An Act to Provide that the Fee of Two Dollars (\$2) For Issuance of Decals For Snowmobiles Shall Be Deposited with the State Treasurer to the Credit of the State Fish and Game Commission; Amending Section 53-1025, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-1025, R.C.M. 1947, is amended to read as follows:

“53-1025. Display of tax-paid decals on snowmobiles required—application and issuance. No snowmobile shall be operated by any person in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the state *department of revenue or the county treasurer* upon forms to be furnished for this purpose, which may be obtained from the *department* or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, registration number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the *department* may require. Said application shall be signed by the *county treasurer* and transmitted by him to the *department* accompanied by a fee of two dollars (\$2). All moneys collected from payment of such fees shall be turned over to the state treasurer and placed by him in the earmarked revenue